In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1263

BREWER, LOU V. — WARDEN,

Petitioner,

v.

WILLIAMS, ROBERT A. — DEFENDANT,

Respondent.

On Writs of Certiorari, Prohibition, and Mandamus to the United States Court of Appeal for Eighth Circuit

ORIGINAL BRIEF AMICUS CURIAE FOR THE STATE OF LOUISIANA

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INDEX

TABLE OF AUTHORITIES

Cases:

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This brief amicus is presented on behalf of the State of Louisiana.

STATEMENT OF FACTS

This case is before the Court on a Writ of Certiorari, Prohibition, and Mandamus to review judgment of United States Circuit Court of Appeal for 8th Circuit in the case of *Brewer v. Williams*, 182 N.W. 2d 396. See also 375 F.Sup. 170 (1974) and 509 F.2d 227 (8th Cir.). Writs accepted December 15, 1975. No. 74-1263.

After his conviction in the Iowa District Court, the Supreme Court of Iowa affirmed the decision at 182 N.W. 2d 396. The defendant took writs to the United States District Court 375 F.Sup. 170 (1974).

This case presents for review the single question of whether a defendant who has been afforded all procedural safeguards as delineated in *Miranda v. State of Arizona*, 86 S.Ct. 1602 (1966), 384 U.S. 478, may nevertheless make a knowing and intelligent waiver of those rights.

ARGUMENT

I.

In *Miranda v. State of Arizona*, supra, defendant was not given a full and effective warning of his rights at the outset of the interrogation process. This Court held that the following measures are required:

> "He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given and such opportunity afforded him, the individual may *knowingly and intelligently waive these rights* and agree to answer questions or make a statement." (Emphasis added.)

In the case at bar, the defendant was apprised of his rights twice by the police and once by the District Court Judge before whom he was brought. In *Massie v. Commonwealth of Virginia*, 384 F.Sup. 160, where defendant initiated conversation with a police officer and confessed his guilt and there was no showing that

he was coerced or forced in anyway to make the confession, the confession was held to be a volunteered statement and thus admissable. There is no requirement that police stop a man from talking when he voluntarily and without solicitation wants to confess a crime. *U.S. v. Wiggins*, 509 F.2d 454.

The State of Louisiana respectfully submits that the only issue before this Court is the voluntariness of the defendant's confession. *Hughes v. Swenson*, 452 F.2d 866 (8th Cir. 1971). It has long been held that no *express* words of waiver are needed to effectuate such a waiver. *Hughes v. Swenson*, supra. *U.S. v. Montos*, 421 F.2d 215 (5th Cir.) cert. denied 397 U.S 1022, 90 S.Ct. 1262; *U.S. v. Ganter*, 436 F.2d 364 (7th Cir. 1970); *U.S. v. Hilliker*, 436 F.2d 101 (9th Cir. 1970) cert. denied 401 U.S. 958, 91 S.Ct. 987; *Bond v. U.S.*, 397 F.2d 162 (10th Cir.) cert. denied 393 U.S. 1035, 89 S.Ct. 652.

The record is devoid of any evidence to show that any threats or promises were made to the defendant and no inference can be drawn that such promises or threats were made. As for Officer Leaming allegedly having solicited a confession, the record will show that he specifically told the defendant "not to answer" but to "think about it". The record will also reflect that it was the defendant, not the police, who initiated the conversation.

The State of Louisiana therefore contends that the rule of *Miranda*, supra, is inapposite and ought not be applied to the instant case. Nevertheless, if the

Court finds that the rule of *Miranda*, supra, is applicable to the facts of this case, we respectfully urge this Honorable Court to reconsider the *Miranda* decision in light of the rapid changes which have occurred in the criminal justice system in the decade since the *Miranda* decision.

To paraphrase the words of Justice White, the *Miranda* decision was neither compelled nor even strongly suggested by the language of the Fifth Amendment. Certainly there are other viable alternatives that *Miranda*, supra, proposes. The State of Louisiana urges this Honorable Court to adopt the test fashioned by Justice Clark in his dissent in *Miranda*, supra. That dissent emphasized the "totality of circumstances", coupled with a pre-custodial interrogation warning that the defendent *might* have counsel present at the interrogation. In the absence of warnings, the burden would be on the State to prove, inter alia, that the totality of the circumstances show conclusively that the confession was voluntarily rendered.

CONCLUSION

Because of the seriousness of the issue before the Court, the Attorney General of the State of Louisiana wishes to submit this brief in the form of Amicus Curiae for consideration of the arguments advanced herein. It is the contention of the State of Louisiana that the rules delineated by the case of *Miranda v. State of Arizona*, supra, do not apply to the instant case. Still, if this Honorable Court should find *Miranda*, supra, apposite, the State of Louisiana also respectfully

urges this Honorable Court to reconsider the decision of *Miranda*, supra, in light of other, more viable alternatives now available to this Honorable Court.

Respectfuliy submitted,

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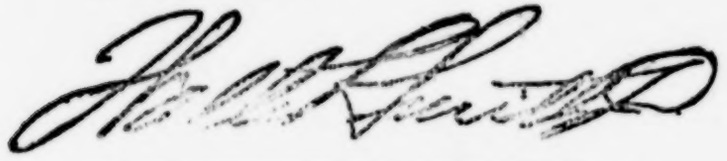

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